IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

R.S.E.B. & anr. vs. Bhanwar Lal

S.B. Civil Second Appeal No.88/1989 against the judgment and decree dated 26.4.89 passed by the learned District Judge No. Merta in Civil Appeal No.62/1981

Date of Judgment: March 10, 2006.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. Ravi Bhansali for the appellants.

BY THE COURT:

Heard learned counsel for the appellants.

Brief facts of the case are that the plaintiff-agriculturist obtained an electricity connection from the defendant-appellants, which he surrendered on 4.10.1978. When new electricity supply scheme came in force, the plaintiff obtained another electricity connection in the year 1979 in which electricity supply is provided on the basis of the flat-rate system. The plaintiff also submitted that in the month of March, 1979, he received bill from the defendant-appellant for flat-rate bill of Rs. 112.50 and in this bill, the defendant-appellants demanded Rs.875/- as arrears whereas the plaintiff had already paid all the bills amount. The

plaintiff sought relief of injunction that on account of non-payment of this arrears, the electricity connection of the plaintiff may not be disconnected. The defendant-Electricity Board submitted written statement and admitted that the plaintiff's electricity connection no.578/33 was disconnected on 7.10.1978 on plaintiff's request, however, according to defendant-appellants in the bill of March, 1979, the demand was raised against the plaintiff of Rs.875/- which is the minimum charges amount for the months of April, 1978 to January, 1979. It is submitted that the electricity connection of the plaintiff remained disconnected from 7.10.1978 to 3.3.1979 temporarily and on the request of the plaintiff but for this also, the plaintiff was liable to pay the minimum charges as per the contract.

The trial court held that defendant-Electricity Board failed to prove any contract between the plaintiff and the defendants for payment of minimum charges because of the reason that though the agreement was submitted by the defendants but that agreement was not proved and the plaintiff denied the signature over the said agreement. Therefore, the trial court decreed the suit of the plaintiff to the effect that the defendant-appellants shall not recover the amount of Rs.875/- from the plaintiff.

Said judgment and decree of the trial court dated 28.8.1981 was challenged by the defendant-appellants by preferring first appeal. The

first appellate court dismissed the appeal of the appellants, on merits as well as on the ground that the appeal of the appellant is not maintainable because of the fact that the decree has been passed by the trial court restraining the appellant-defendants from recovering Rs.875/- which is the valuation of the appeal and the appeal is barred under Section 96(4),C.P.C. in view of the valuation of the appeal.

Being aggrieved, the appellants have preferred this appeal. Following substantial questions of law were framed by this Court on 29.8.1989 while admitting the appeal:_

> *"1. Whether the first appellate court was right in observing that the appeal was not maintainable in view of the provisions of Section 96(4),C.P.C.?*
>
> *2. Whether the plaintiff was not liable to pay the amount of prescribed minimum charges?"*

So far as substantial question of law no.1 is concerned, that is required to be decided in favour of the appellants simply because of reason that the first appellate court failed to appriciate that this was not suit for recovery of money but this was a suit for injunction. The amount involved was not relevant for deciding the maintainability of the suit. In a suit for injunction, valuation may be minimum or less than the amount for which the appel is prohibited by law under Section 96(4), C.P.C. But in a suit for injunction the decree is appealable irrespective of the valuation because of the simple reason that in the suit for

injunction, the relief can be granted by the court where subject matter may not have valuation.

So far as substantial question no.2 is concerned, this Court is not inclined to interfere in the said finding of the courts below because of the involvement of amount, apart from the fact that the trial court observed that the contract for payment of minimum charges has not been proved. It is true that there may be statutory condition under which the amount can be claimed but no such argument was raised before the trial court or before the appellate court by the defendants and, therefore, the courts below decided the suit and appeal as it was presented before the courts. It will be worthwhile to mention here that before the first appellate court, the appellants' only grievance was that burden of proving the issues was wrongly placed upon the defendants and that it was not the case of the appellants that even if the appellant had not produced any evidence, they can claim minimum charges from the consumer under the conditions of supply of electricity, therefore, I do not find any merit in this appeal.

Hence the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

Mlt.